

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 30 May 1989

SALE OF LIQUOR BILL
Proposed Amendments

RICHARD NORTHEY, in Committee, to move the following amendments:

Clause 14: To omit from line 34 on page 16 the word "may", and substitute the word "shall".

To omit paragraph (c) of subclause (4) (all the words in lines 5 to 7 on page 17).

To add on that page the following subclause:

(7) Without limiting anything in subsection (3) of this section, on granting an application for an on-licence, the Licensing Authority may designate the whole or any part or parts of the premises or conveyance as a restricted area or a supervised area.

Clause 35: To omit from line 20 on page 30 the word "may", and substitute the word "shall".

To omit paragraph (b) of subclause (3) (all the words in lines 24 to 26 on that page).

To add on page 31 the following subclause:

(6) On granting an application for an off-licence, the Licensing Authority may designate the whole or any part or parts of the premises as a restricted area or a supervised area.

Proposed clause 88CA: To insert on page 60, after clause 88c, the following clause:

88CA. Annual report—(1) Within 3 months after the end of every financial year, the Licensing Authority shall prepare and send to the Minister a report—

- (a) Of the Authority's proceedings and operations during the year; and
- (b) On the working of this Act and the desirability or otherwise of amending it.

(2) The Minister shall lay a copy of the report before the House of Representatives within 20 sitting days after the date on which the Minister receives it.

Clause 88E: To insert on page 61, after paragraph (e), the following paragraph:

- (ea) To conduct such inquiries and to make such reports as may be required of it by the Licensing Authority under section 88A of this Act:

Proposed clause 88IA: To insert on page 63, after clause 88i, the following clause:

88IA. Annual reports—(1) Within 3 months after the end of every financial year, every District Licensing Agency shall prepare and send to the Licensing Authority a report of the District Licensing Agency's proceedings and operations during the year.

(2) The Licensing Authority or the District Licensing Agency shall supply a copy of each such report to any person who requests it on payment of such reasonable fee as the Authority or Agency may prescribe.

Clause 123: To omit subclause (4) on page 96, and substitute the following subclause:

(4) It is a defence to a charge under subsection (1) or subsection (2) of this section if the defendant proves that the person who sold or supplied the liquor—

- (a) Did so only after having obtained from the person to whom it was sold or supplied a written statement to the effect that he or she had attained the age of 20 years or other reasonable documentary evidence of the age of that person; and
- (b) Had reasonable grounds for believing, and did believe, that statement or other evidence to be correct.

Proposed clause 203A: To insert on page 141, after clause 203, the following clause:

203A. No-licence districts to have vote on local restoration—(1) This section applies to each district that, immediately before the commencement of this Act, was a no-licence district within the meaning of the Sale of Liquor Act 1962.

(2) A poll of electors residing in each district to which this section applies shall be held not later than the 31st day of December 1990, on a day to be fixed by the Licensing Authority and in accordance with regulations made under this Act, on the question whether all licences shall be restored in that district (called in this section the local restoration proposal).

(3) The local restoration proposal shall be deemed to be carried if the number of valid votes recorded for that proposal exceeds the number of valid votes recorded against it.

(4) If the local restoration proposal is not carried, a further poll shall be held under this section in respect of the district in conjunction with each succeeding general election of members of the House of Representatives until the local restoration proposal is carried.

(5) Without limiting anything in section 204 of this Act, no application—

- (a) For an on-licence for any hotel other than a tourist-house, or for any tavern; or
 - (b) For an off-licence otherwise than for a club or in respect of premises on which any kind of liquor is made,—
- may be made in respect of any premises within any district to which this section applies unless and until the local restoration proposal is carried in that district.

Clause 204: To add to subclause (1), in line 29 on page 141, the words “and in which the local restoration proposal has been carried on a poll held under section 203A of this Act”.

To omit from line 32 on that page the words "commencement of this Act", and substitute the words "carrying of the local restoration proposal".

To omit subclause (4) on that page, and substitute the following subclause:

(4) Pending the final declaration of the result of the poll on the trust proposal, no application—

(a) For an on-licence for any hotel other than a tourist-house, or for any tavern; or

(b) For an off-licence otherwise than for a club or in respect of premises on which any kind of liquor is made,—
may be made in respect of any premises within the district.

Proposed Part XII: To insert on page 144, after clause 207, the following Part:

PART XII

LIQUOR ADVERTISING

208. Interpretation—In this Part of this Act, unless the context otherwise requires,—

"Advertising programme" means a programme or part of a programme that is intended to promote the interest of any person, or to promote any product or service for the commercial advantage of any person, and for which, in either case, payment is made, whether in money or otherwise:

"Broadcaster" means a person who, or a station that, broadcasts programmes:

"Broadcasting" means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus; but does not include any such transmission of programmes made on the demand of a particular person for reception only by that person:

"Committee" means the New Zealand Committee of Advertising Practice constituted by section 211 of this Act:

"Liquor advertising" means any form of communication made to the public or a section of the public for the purpose of promoting the sale or supply of liquor, whether by product, brand, company name, or outlet; and includes publicising of sponsorship:

"Sponsor" means a person or organisation who or that has provided material support for an activity, whether in money or otherwise:

"Sponsorship" includes activity that is under the direct control of the sponsor or is undertaken by any person or organisation enjoying any form of material support from the sponsor.

209. Prohibiting liquor advertising on television and radio stations—Every broadcaster commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who broadcasts or screens any advertising programme that—

(a) Promotes the sale, purchase, or consumption of liquor or any type of liquor or of any brand of any type of liquor; or

- (b) Names any person or company (whether by that person's or company's real name or trading name or otherwise) as being a person or company from whom or which liquor or any type of liquor or any brand of any type of liquor may be purchased; or
- (c) Names or describes any premises or class of premises as being premises at, from, or on which liquor or any type of liquor or any brand of any type of liquor may be purchased or consumed.

210. Prohibiting liquor advertising at exhibition of film—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, at any public exhibition of a film, exhibits any advertising programme that—

- (a) Promotes the sale, purchase, or consumption of liquor or any type of liquor or of any brand of any type of liquor; or
- (b) Names any person or company (whether by that person's or company's real name or trading name or otherwise) as being a person or company from whom or which liquor or any type of liquor or any brand of any type of liquor may be purchased; or
- (c) Names or describes any premises or class of premises as being premises at, from, or on which liquor or any type of liquor or any brand of any type of any liquor may be purchased or consumed.

New Zealand Committee of Advertising Practice

211. New Zealand Committee of Advertising Practice—

- (1) For the purposes of this Act there shall be a Committee, to be called the New Zealand Committee of Advertising Practice (hereinafter referred to as the Committee).
- (2) The Committee shall consist of 15 members to be appointed by the Minister of Health, of whom—
 - (a) One member shall be nominated by the Chief Executive of the Department of Health:
 - (b) One member shall be nominated by the Chief Executive of the Ministry of Consumer Affairs:
 - (c) One member shall be appointed by the Chief Executive of the Ministry of Women's Affairs:
 - (d) One member shall be nominated by the Council of the Public Health Association of New Zealand:
 - (e) One member shall be nominated by the Council of the Health Promotion Forum (Incorporated) of New Zealand:
 - (f) One member shall be nominated by the Health Council:
 - (g) One member shall be nominated by the Alcoholic Liquor Advisory Council:
 - (h) One member shall be nominated by the Newspapers Publishers Association:
 - (i) One member shall be nominated by Television New Zealand Ltd:
 - (j) One member shall be nominated by Radio New Zealand Ltd:
 - (k) One member shall be nominated by the Independent Broadcasters Association:

- (l) One member shall be nominated by the Magazine Publishers' Association:
 - (m) One member shall be nominated by the Association of Accredited Advertising Agencies:
 - (n) One member shall be nominated by the Association of New Zealand Advertisers:
 - (o) One member shall be nominated by the Community Newspapers Association.
- (3) If any organisation named in subsection (2) of this section ceases to exist, the organisation that succeeds that body shall have the same power to nominate a member.
- (4) The Committee shall in each year elect its own chairperson from among its members.

212. Term of office—(1) Subject to section 211 (4) of this Act and to the succeeding provisions of this section, every person appointed under section 211 of this Act shall be appointed for a term of 3 years, but may from time to time be reappointed.

(2) Any member of the Committee may resign his or her office at any time by written notice given to the Minister of Health.

(3) Any member of the Committee may be removed from office at any time by the Minister of Health for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(4) Any organisation named in section 211 (2) of this Act may nominate another member of the Committee to replace its existing member after less than 3 years—

- (a) If its existing member resigns, dies, or is removed from office; or
- (b) By resolution of that organisation.

Every person so appointed shall hold office for the residue of the term for which his or her predecessor was appointed.

(5) At all meetings of the Committee, the quorum necessary for the transaction of business shall be 8 members.

(6) Decisions of the Committee shall be made by consensus where practicable and otherwise by a majority with, in the event of an equality of votes, the chairperson having a casting vote.

213. Functions of Committee—The functions of the Committee shall be as follows:

- (a) Within 6 months after the date of the commencement of this Act, to promulgate and enforce a code, to be known as the alcohol code, regulating liquor advertising on hoardings and in the print and other media:
- (b) To report annually, and at other times on its own motion, to the Minister of Health on matters relating to liquor advertising.

214. Alcohol code—(1) The alcohol code shall clearly define—

- (a) The scope of liquor advertising; and
- (b) The procedures, which shall be in accordance with the principles of natural justice, by which any person, including any member of the Committee, may lodge,

provide evidence relating to, and be heard on, any complaint of apparent breaches of the code.

- (2) Without limiting its scope or content, the alcohol code shall, among other things, provide the following:
- (a) Advertisements shall not be placed in publications that are intended primarily for minors:
 - (b) Any person shown drinking in any liquor advertisement shall be clearly over the age of 20 years:
 - (c) There shall be no encouragement of drinking by people under the age of 20 years, either directly or by implied example, whether through linking liquor with identifiable heroes or heroines of the young, or with people who are celebrities or are well-known in any field, or through any other means:
 - (d) There shall be no linking of liquor with sport or organised recreation:
 - (e) There shall be no depiction, suggestion, or encouragement of drunkenness or excessive drinking:
 - (f) There shall be no reference to mood or lifestyle factors such as relating liquor to success, pleasure, or excitement in life; associating liquor and sex or romance; or associating liquor with ruggedness, fitness, or manliness:
 - (g) Other than for the purpose of educating potential consumers of the danger or harm involved, there shall be no depiction of persons consuming liquor before or while working, driving, or engaging in other activities in which drinking is potentially dangerous or harmful:
 - (h) Advertisements for activities that are sponsored by individuals or organisations involved in the manufacture, importing, distribution, promotion, or sale of liquor shall not contain any message pertaining to any liquor, and shall not depict or refer to liquor products, packages, containers, the consumption of liquor, or the sponsor's name or logo:
 - (i) Advertising shall not contain any description, claim, or comparison that is misleading about the product, or suggest that the product advertised has some special quality or property that cannot be sustained:
 - (j) Advertisements shall reflect people drinking responsibly in natural situations, and shall not depict fantasy situations in relation to drinking.

215. Sanctions against breaches of alcohol code—

- (1) The advertising media shall invoke media sanctions against the advertiser and the offending advertisements found to have breached the alcohol code or to be in continuing breach of the alcohol code in accordance with any advice or directions received from the Committee,
- (2) The sanctions shall be as follows:
 - (a) For a first breach of the alcohol code, a written warning shall be sent by the Committee to the advertiser and agency and the advertiser shall be required to withdraw the offending advertisement within such period as may be specified by the Committee:
 - (b) For a second breach of the alcohol code, the advertiser shall be required by a written direction from the

Committee to withdraw the offending advertisement; and, if the Committee so determines, all advertising from that advertiser shall be banned from all advertising media for a period of up to 3 months from the time of receipt of such written advice.

(3) Where the Committee finds that a breach has occurred, the Committee shall advise all affected media in writing of its decision, and the sanctions to be applied.

(4) Where an advertiser fails to comply with a written direction under subsection (2) of this section, the Committee may initiate action in a District Court to determine the issue. The District Court may direct the advertiser to comply with the direction given under subsection (2) of this section and may impose a fine not exceeding \$50,000 on the advertiser. The District Court may also make an order apportioning costs of the hearing.

(5) Any advertiser who is subject to a direction under subsection (2) of this section may appeal to the District Court regarding the terms of the direction. The District Court may quash, confirm, or vary any such direction and may make an order apportioning costs of the hearing.

216. Funding—The Committee shall have the authority to levy from time to time some or all of the organisations nominating its members to raise sufficient funds to meet all reasonable costs of its operation. In fixing such levies, the Committee shall consult with the organisations involved, and inform them of the costs incurred by the Committee, and the Committee shall take into account the resources of each organisation and its ability to contribute towards those costs.

EXPLANATORY NOTE

Clause 14: The amendments ensure that in every case where the Licensing Authority grants an on-licence, it shall prescribe conditions relating to hours of sale, the provision of food, and the exclusion of prohibited persons. As the clause stands at present, these provisions are permissive rather than mandatory.

Clause 35: These amendments do likewise in respect of off-licences.

Proposed clause 88CA: The clause requires the Licensing Authority to make an annual report to the Minister, who must lay it before Parliament.

Clause 88E: The amendment is consequential upon *clause 88A*. It is a function of each District Licensing Agency to carry out such inquiries and make such reports as the Licensing Authority may require under that clause.

Proposed clause 88IA: The clause requires each District Licensing Agency to report annually to the Licensing Authority. Any person may obtain a copy of a report on payment of the prescribed fee.

Clause 123: The amendment narrows the circumstances in which a person has a defence to a charge of selling or supplying liquor to a minor. The defence will be available only where the minor was required to give a written statement of his or her age or to produce other reasonable documentary evidence of his or her age.

Present no-licence districts

The intention here is to preserve the present status of these districts unless and until local restoration is carried on a poll. However, it is proposed that a simple majority in favour of local restoration should be sufficient. Under the present law, 60 percent of the votes is required to carry local restoration.

The relevant amendments here are the proposed *clause 203A* and the amendments to *clause 204*.

Liquor Advertising

The intention is to impose controls on the extent and content of liquor advertising.

The proposals on this matter are set out in the proposed *Part XII*, comprising *clauses 208 to 216*.

Clause 208 relates to interpretation.

Clause 209 prohibits any direct or indirect advertising of liquor on television, or radio, or by other public electronic media.

Clause 210 makes similar provision in respect of public exhibitions of films.

Clauses 211 and 212 give statutory recognition to the New Zealand Committee of Advertising Practice for the purpose of promulgating and enforcing its alcohol code. The membership of the Committee is increased to include persons representing public health and consumer interests.

Clause 213 prescribes 2 functions for the Committee. First, it must promulgate and enforce an alcohol code, regulating liquor advertising in all media, including hoardings. Secondly, it must report to the Minister of Health annually, and at other times as it thinks fit, on matters relating to liquor advertising.

Clause 214 specifies the matters to be dealt with in the code. The code would define the proper scope of liquor advertising. It would not permit any reference to "mood" or "lifestyle" factors, nor would it allow liquor to be linked with identifiable heroes or heroines of the young, or with celebrities.

Clause 215 provides for sanctions against breaches of the alcohol code.

Clause 216 provides for levies of its constituent organisations to provide for all of the costs of the operation of the Committee.